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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,320	08/15/2003	Marc A. Pedmo	03-204	2843
7590	11/26/2004		EXAMINER	
ROBERT H. BACHMAN 59 Richard Sweet Drive Woodbridge, CT 06525			WEAVER, SUE A	
			ART UNIT	PAPER NUMBER
			3727	
			DATE MAILED: 11/26/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/642,320	PEDMO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sue A. Weaver	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 September 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-12 and 14-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 17 is/are allowed.

6)  Claim(s) 1-12, 14, 15 and 18-23 is/are rejected.

7)  Claim(s) 16 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 07 September 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The title does not reflect a container with vacuum panel construction, as claimed.

2. The drawings were received on 9/7/04. These drawings are accepted.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-11, 14, 15 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vailliencourt et al in view of Tobias, both of record.

Vailliencourt et al teach a hot fill container having a plurality of vacuum panels spaced around the periphery of the side wall and including upper and lower recessed ribs or bands above and below the vacuum panels. The ribs are continuous. However to have made the upper one discontinuous so as to provide a larger area for label mounting would have been obvious in view of such teaching by Tobias. Note that the discontinuity aligns with the center of the vacuum panel. Note that the upper and lower portions of the six vacuum panels of Vailliencourt et al are curved at 32 and 33.

Vailliencourt also shows what appears to be the usual recessed base. In any event the provision of recessed bases to help with vacuum absorption is well-known in hotfill

containers. Note the recess portion of Vaillancourt et al at 18. Note further the label bumpers 22,24 of Tobias.

4. Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Scheffer et al, of record.

Tobias teaches that the ends 32a, 32b will not overlap. However to have extended them such that they meet near the middle of the vacuum panel to cover most of the extent of the vacuum panel would have been a matter of degree difference dependent upon how much label mounting area is desired and obvious in view of Scheffer et al showing such extent.

5. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 2 and 3 above, and further in view of Krishnakumar et al '184, of record.

To have only provided the container with two vacuum panels for a smaller container would have been obvious in view of such teaching by Krishnakumar et al. Note that with two vacuum panels spaced 180 degrees apart the discontinuities would also be inherently be spaced 180 degrees apart. To have further provided the recessed base with ribs or struts to reinforce the recess would have been obvious in view of such teaching by Krishnakumar et al for a recessed container base.

6. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 13 has been canceled.
8. Applicant's arguments, see page 13 of the amendment, filed 9/7/04, with respect to the objections to the drawings, disclosure and claim 13 have been fully considered and are persuasive. The objections to the drawings, disclosure and of claim 13 have been withdrawn.

Applicant's arguments filed 9/7/04 have been fully considered but they are not persuasive. Applicants have argued that tobias requires that both upper and lwer band be discontinuous. However on page 5 in his discussion of the upper and lower rib or band construction Tobias discusses the upper and lower discontinuities in the alternative not the conjunctive which would suggest that one might be continuous while the other is discontinuous. In any event the extent of coverage is dependent up on the label mounting area desired. Therefore claims 1-12, 14, 15 and 18-23 have been rejected.

9. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Sue A. Weaver*  
Sue A. Weaver  
Primary Examiner

SW